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November 3, 2006

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VIA HAND DELIVERY

Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

MUR # 5879

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
NOV -6 P 1:46

Re: Complaint Against Harry Mitchell for Congress and the  
Democratic Congressional Campaign Committee

To Whom It May Concern:

Pursuant to 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4, J.D. Hayworth for Congress hereby files this Complaint against Harry Mitchell for Congress and the Democratic Congressional Campaign Committee. Harry Mitchell for Congress ("Harry Mitchell") is the principal authorized campaign committee of Harry Mitchell, Democratic candidate for Congress in the 5<sup>th</sup> congressional district of Arizona. The Democratic Congressional Campaign Committee ("DCCC") is a national party committee as that term is defined in 11 C.F.R. §100.5(e)(4), (collectively "Respondents").

Complainant herein is the principal authorized committee of J.D. Hayworth, Republican congressman from the 5<sup>th</sup> District of Arizona ("the Committee").

The undersigned serves as counsel to J.D. Hayworth for Congress and is authorized to file this complaint on its behalf.

The complaint is filed against the Respondents for violation of the Federal Election Campaign Act of 1971, as amended ("the Act" or "FECA") and the regulations of the Federal Election Commission ("the Commission" or "FEC"), specifically for producing and disseminating illegally coordinated public communications resulting in the DCCC's making of an illegal, excessive contribution to Harry Mitchell in the amount of at least \$160,358.31 in violation of 2 U.S.C. §441a(d)(3) and 11 C.F.R. §109.32 and for filing a false report of "independent expenditures" in violation of 11 C.F.R. §§104.4(d) and 109.10(e).

Facts of the Violation(s)

On or about October 31, 2006, the DCCC began airing television advertisements in support of Harry Mitchell. The DCCC filed a Form 5 with the Federal Election Commission on November 1, 2006 which attested under penalty of perjury that the advertisement was made independent of Harry Mitchell and was not authorized by 'any candidate or candidate's committee'.

BOSTON  
BRUSSELS  
CHICAGO  
DETROIT  
JACKSONVILLE

LOS ANGELES  
MADISON  
MILWAUKEE  
NEW YORK  
ORLANDO

SACRAMENTO  
SAN DIEGO  
SAN DIEGO/DEL MAR  
SAN FRANCISCO  
SILICON VALLEY

TALLAHASSEE  
TAMPA  
TOKYO  
WASHINGTON, D.C.

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Federal Election Commission

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The ad featured Harry Mitchell in several scenes, some of which clearly were produced in a manner that would necessarily have required Harry Mitchell's material involvement. See Attached.

Then, within 24 hours of the airing of the DCCC advertisement, Harry Mitchell also began to air a commercial which featured the identical visual footage as the DCCC ad, which had purported to be 'independent' of Harry Mitchell.

See attached Exhibit 1, screen shots from the DCCC advertisement, side by side with the Harry Mitchell advertisement.

According to the provisions of McCain-Feingold, the Bipartisan Campaign Reform Act of 2002, 2 U.S.C. §§ 431(17), 441a(a) and (d) and the FEC regulations, 11 C.F.R. §109.21, a public communication is *not* independent if made with the material involvement with the candidate or the candidate's authorized committee. Nor is a public communication independent if it republishes or disseminates materials produced by the candidate. 11 C.F.R. §109.23.

The Federal Election Commission has promulgated extensive regulations to enforce the strict prohibitions against coordinated public communications by persons other than the candidates and their campaigns. The DCCC's advertisement is obviously *not* independent of Harry Mitchell. The identical scenes, footage and visual portion of the DCCC's advertisement appears in the Harry Mitchell ad. Harry Mitchell and the DCCC have obviously coordinated their public communications. Such conduct is prohibited under the FEC's regulations governing coordinated public communications and the DCCC advertisement constitutes a contribution to the Harry Mitchell campaign. 11 C.F.R. §109.21(b).

The purpose of the restrictions on coordinated public communications is to prohibit circumvention of the contribution limits which the law imposes on candidates and political parties. See 11 C.F.R. § 109.21. Political parties are limited *by federal law* in the amount that the party committee(s) are permitted to spend on behalf of their candidates in *coordination* with their candidates. 11 C.F.R. §109.32. The amount that the DCCC is permitted to spend on behalf of its candidates, such as Harry Mitchell, in 2006 is \$79,200, presuming that the Arizona Democratic Party has transferred its coordinated spending authority to the DCCC.

The amount of the television buy for the advertisement at issue here was \$168,278.31, according to the report of 'independent expenditure' filed by the DCCC on or about November 1, 2006.

Accordingly, the amount of the coordinated public communication the DCCC has produced and aired on Harry Mitchell's behalf is \$168,278.31, which constitutes an illegal excessive contribution from the DCCC to Harry Mitchell in the amount of \$160,358.31.

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Further, if the DCCC has already made its legally permissible coordinated expenditures on behalf of Harry Mitchell, the entire amount of the DCCC advertisement is an illegal excessive contribution to Harry Mitchell.

Finally, the DCCC is a national party committee, sophisticated in the FEC's regulations governing independent vs. coordinated public communications. The actions of the DCCC in producing and airing advertisements which purport to be independent but which are really made in coordination with their candidate cannot be accidental or inadvertent. The Commission should investigate to determine if the DCCC's coordinated public communications were made in knowing and willful disregard of the Act, pursuant to 2 U.S.C. §2 U.S.C. §437g(a)(5)(B), (6)(C) and (d)1; 11 C.F.R. §110.9, §111.24(2).

Conclusion

Upon information and belief, and based upon the facts presented and the evidence attached hereto, the DCCC and Harry Mitchell have violated the Federal Election Campaign Act of 1971, as amended.

Accordingly, on behalf of Complainant JD Hayworth for Congress, this complaint is duly filed for the reasons stated herein.

Submitted,

Cleta Mitchell, Esq.  
Counsel to JD Hayworth for Congress

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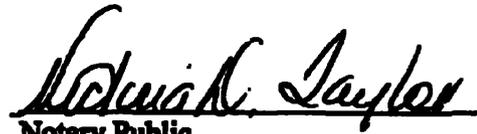
Federal Election Commission

November 3, 2006

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Before me this 3<sup>rd</sup> day of November, 2006, appeared Cieta Mitchell, attorney at law, and under penalty of perjury did swear and affirm that the above and foregoing facts are true and correct to the best of her knowledge and belief, acting as counsel for JD Hayworth for Congress.

SEAL

  
Notary Public

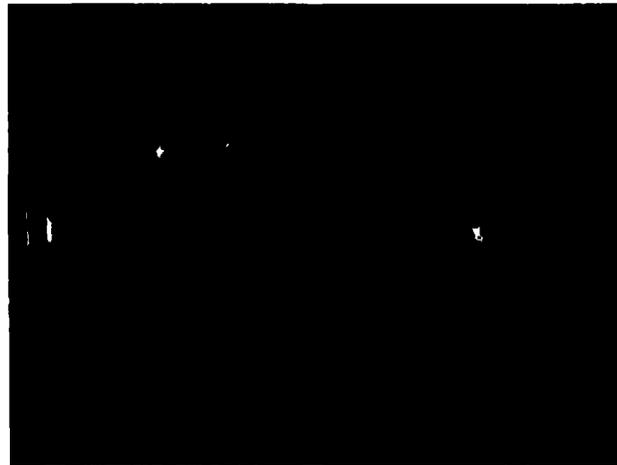
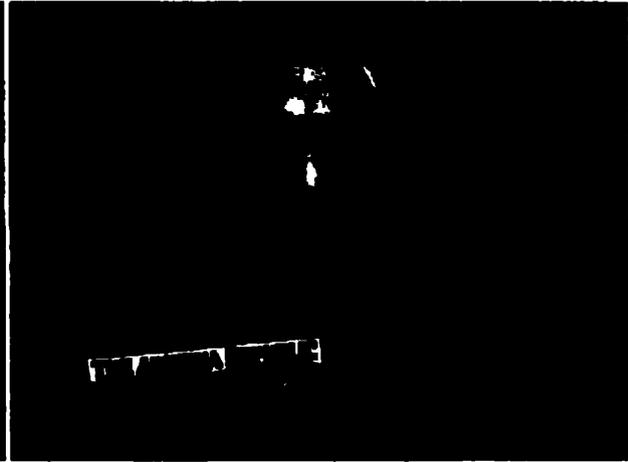
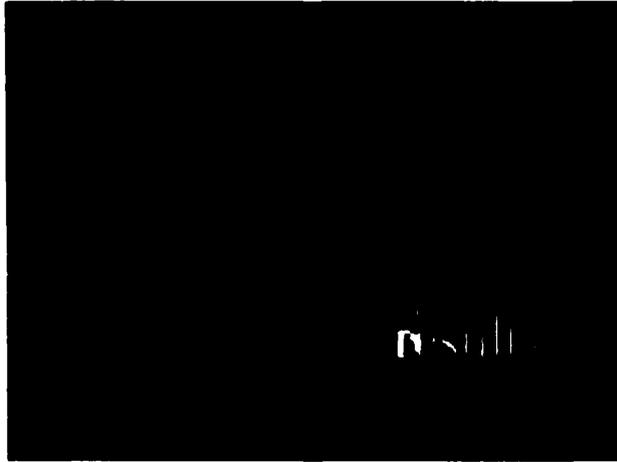
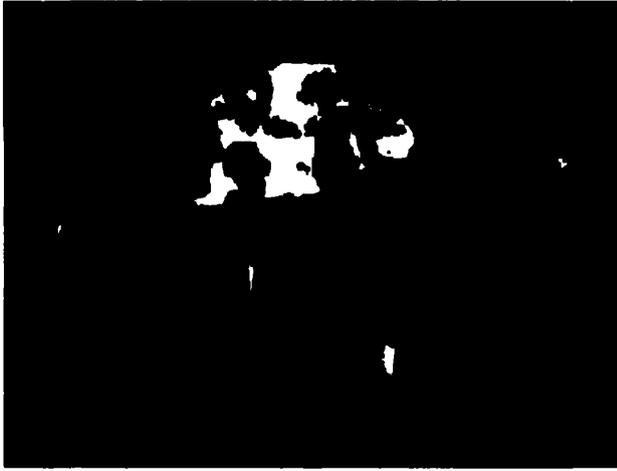
My Commission Expires:

Victoria D. Taylor  
Notary Public District of Columbia  
My Commission Expires May 14, 2011

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Mitchell

DCCC



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Get the scoop on what your clients & competitors are doing.



November 5, 2006

## Hayworth vows suit over foe's ads

By Paul Giblin  
Tribune

Republican J.D. Hayworth has announced that he plans to file a federal elections law complaint against the Democratic Congressional Campaign Committee and Democratic challenger Harry Mitchell. A new television commercial by the Washington-based Democratic committee is a "clear violation" of election laws that bar candidates' campaigns from having any material involvement in the content of the ad funded by outside interests, Hayworth said.

But a spokeswoman for the committee and a spokesman for Mitchell said Hayworth's claim is baseless.

"If this is J.D.'s November surprise, he's going to be totally disappointed," said Mitchell's aide, Seth Scott.

The commercial, which Hayworth showed during a news conference at the Arizona Republican Party headquarters in Phoenix on Wednesday, features footage of Mitchell talking to people in a neighborhood setting and inside a house.

The footage was either shot by the Mitchell campaign and provided to the Democratic committee, or the committee just happened to have a cameraman present when Mitchell stopped by someone's house, said GOP attorney Tim Casey.

The footage is obviously staged, and there are tell-tale signs that the Mitchell campaign and the committee cooperated, Casey said.

"Who was the cameraman? How did he know where to show up? How was he invited into the home? What was told to the people in the home about who the cameraman was or was working for?" Casey asked.

Casey himself never asked anyone in the Mitchell campaign any of those questions before Hayworth's campaign finance attorney in Washington prepared the complaint.

Scott told the Tribune Mitchell's campaign arranged to have the footage shot some time ago and put it on an Internet server, making it available to anyone.

The same footage is included in an ad released Wednesday by the Mitchell campaign.

Democratic committee spokeswoman Kate Bedingfield said the organization's staffers are familiar with federal campaign regulations and that the commercial is perfectly legal. She declined to specify how the committee obtained the footage of Mitchell.

Hayworth's Washington attorney Cieta Mitchell said she was assembling the formal complaint to the Federal Election Commission on Thursday.

The penalty for violations of the type suggested by Hayworth generally is a fine, said the attorney, unrelated to Harry Mitchell.

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# SCHEDULE E

## INDEPENDENT EXPENDITURES

FILING FEC-255948

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**Committee: DEMOCRATIC CONGRESSIONAL CAMPAIGN COMMITTEE**

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### Great American Media

1010 Wisconsin Ave. NW  
Washington, DC 20007

**Purpose of Expenditure: Media Buy**  
**This Committee SUPPORTS The Following Candidate: Harry Mitchell**  
**Candidate ID: H6AZ05067**  
**Office Sought: House of Representatives**  
**State is Arizona in District 05**  
**Date Expended = 10/31/2006**

**Amount Expended = \$168278.31**  
**Calendar YTD Per Election for Office Sought = \$1986843.26**

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### Great American Media

1010 Wisconsin Ave. NW  
Washington, DC 20007

**Purpose of Expenditure: Media Buy**  
**This Committee OPPOSES The Following Candidate: JD Hayworth**  
**Candidate ID: H4AZ06052**

10044264762

Office Sought: House of Representatives  
State is Arizona in District 05  
Date Expended = 10/31/2006

Amount Expended = \$504834.94  
Calendar YTD Per Election for Office Sought = \$1986843.26

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Subtotal of Itemized Independent Expenditures = \$673113.25  
Subtotal of Unitemized Independent Expenditures = \$0.00  
Total Expenditures This Period = \$673113.25

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